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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY 9 1997

Federal Communications Commission
Office of Secretary

In the Matter of

Revision of Part 22 and Part 90
of the Commission's Rules to
Facilitate Future Development of
Paging Systems

WT Docket No. 96-18

Implementation of Section 309(j)
of the Communications Act --
Competitive Bidding

PP Docket No. 93-253

To: The Commission

**NATIONWIDE PAGING PARTIAL OPPOSITION
TO PETITION FOR RECONSIDERATION**

Nationwide Paging, Inc. ("Nationwide"), by its attorneys and pursuant to Section 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 405 (a), and Section 1.429(f) of the Commission's Rules, 47 C.F.R. § 1.429(f), hereby submits this Partial Opposition to the Petitions for Reconsideration (the "Petition") of the FCC's "Second Report and Order" ("Second R&O") in the above-captioned rule making proceeding filed by AirStar Paging, Inc. ("AirStar") and ProNet, Inc. ("ProNet").¹

**I. The Dismissal of Pending Finder's Preference Requests Should Stand,
and Extend to All Non-Final Preference Proceedings.**

AirStar argues that the Commission should clarify that the dismissal of pending Finder's Preference requests did not include its Finder's Preference request against Nationwide, which is currently on reconsideration. See AirStar Petition at 4. To the extent that its Finder's Preference

¹ Public Notice of the filing of Petitions for Reconsideration of the Second R&O was published in the Federal Register on April 24, 1997; thus, this Response is timely.

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request has been dismissed, AirStar seeks reconsideration of that dismissal.² Id. at 5-8. In its Petition, ProNet argues that all pending litigation, including Finder's Preference Requests under reconsideration or review, should be processed. See ProNet Petition at 7-8. Nationwide opposes AirStar's and ProNet's Petitions on this issue, and submits that the Commission should uphold its dismissal of pending Finder's Preference requests, including those that are on reconsideration or review.

It is axiomatic that a matter is "pending" throughout all administrative appeals. For example, the U.S. Court of Appeals has held that "a pending petition for administrative reconsideration renders the underlying agency action nonfinal" See, Telestar, Inc. v. FCC, 888 F.2d 132, 133 (D.C. Cir. 1989) (citation omitted). Consequently, any Finder's Preference requests on reconsideration and review are "pending" and are equally subject to dismissal under Paragraph 18 of the Second R&O.³ Nationwide further submits that those dismissals are appropriate.

Unlike pending applicants who have already complied with the Commission's established filing and cut-off procedures, "Finders" whose awards are not final have no more than a contingent right to file an application. See 47 C.F.R. § 90.173(k).

Moreover, contrary to AirStar's assertions, see AirStar Petition at 5-6, prospective and

² Since Nationwide is the subject of a Finder's Preference request that is on reconsideration -- and specifically, of AirStar's Finder's Preference request -- Nationwide has standing to oppose the subject Petitions with regard to this issue.

³ The proposition that Finder's Preference requests that are appealed are nonfinal is further illustrated by the Commission's policy of "tolling" the 90 day period from the date of grant, in which grantees of Finder's Preference awards must file applications for permanent authority. The fact that the Commission does not accept applications for permanent authority during the appeals process shows that such awards are "pending," subject to the Commission's approval, and are thus vulnerable to dismissal.

pending "Finders" were given full notice in the Notice of Proposed Rule Making ("NPRM") in this proceeding that the Commission intended to dismiss pending Finder's Preference requests. See NPRM, FCC 96-52, ¶ 22 (released February 9, 1996).

The Commission has ample authority to change its rules in a manner that affects the conditional interests of parties, such as those with pending Finder's Preference requests, as long as it provides adequate notice of the proposed rule changes and opportunities for comment. See, e.g., Hispanic Information & Telecommunications Network v. FCC, 865 F. 2d 1289, 1294-1295 (D.C. Cir. 1989) (where the FCC changes its substantive standards through rule making so that an applicant is no longer qualified, its application may be dismissed). With regard to Finder's Preference requests, the Commission fully complied with its obligations to give affected parties prior notice and the opportunity to be heard. The dismissal of those pending requests should stand.

CONCLUSION

For all the foregoing reasons, Nationwide respectfully requests that the FCC uphold that portion of its Second R&O in this rule making proceeding that dismissed pending Finder's Preference requests, and that it reconsider portions of its Second R&O in accordance with Nationwide's Petition for Reconsideration, filed April 11, 1997. Also, the FCC should clarify that Finder's Preference grants that are subject to agency or judicial appeal are "pending" and have also been dismissed pursuant to the Second R&O.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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